

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN RE:

LOCKWOOD CORPORATION

Debtor.

BK 93-80133

CHAPTER 7

SETTLEMENT AGREEMENT

WHEREAS, on or about January 29, 1993, Lockwood Corporation, a Delaware corporation, (the "Debtor" or "Lockwood") filed a voluntary petition under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, *et seq.*, as amended (the "Bankruptcy Code"); the Debtor continued as debtor-in-possession with respect to its assets, or a portion thereof, until on or about February 20, 1996, when the United States Bankruptcy Court for the District of Nebraska (the "Bankruptcy Court"), upon motion of the Debtor, entered an order converting the Chapter 11 case to a case under Chapter 7 of the Bankruptcy Code.

WHEREAS, on or about February 20, 1996, James J. Stumpf (the "Trustee") was appointed interim trustee for the Debtor, and since such time, he has been the duly appointed, qualified trustee for the estate.

WHEREAS, the Debtor operated a facility located at 220759 Highway 92, Gering, Nebraska, consisting of about 80 acres, from the early 1970s until 1996, when the Debtor ceased operations and obtained financial relief under Chapter 7 of the Bankruptcy Code. During that time, Lockwood manufactured irrigation and potato harvesting equipment. Manufacturing

conducted at the facility included galvanizing and equipment cleaning, which produced significant quantities of hazardous wastes regulated by the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901 *et seq.*, including spent sulfuric acid and heavy metals. During operations through 1984, Lockwood disposed of at least some of its hazardous wastes in the Lockwood Corp. Waste Acid Evaporation Pond, a 1.09 acre Hazardous Waste Management Unit (the "1.09 acre HWMU"). Lockwood was unable to clean and close this unit, and therefore, applied for a RCRA Post Closure Permit, and became subject to RCRA Corrective Action pursuant to Section 3004(u) of RCRA, 42 U.S.C. Section 6924(u), EPA Facility No. NED044101442.

WHEREAS, on or about August 8, 1988, consistent with the RCRA post-closure financial assurance regulations promulgated at 40 C.F.R. Part 264, Subpart H (Financial Assurances) related to environmental conditions at the 1.09 acre HWMU, a Post Closure Trust Fund Agreement (the "Trust" or "Fund") was entered between Lockwood Corp. as the grantor and Scottsbluff National Bank & Trust Co. as trustee, with the United States Environmental Protection Agency ("EPA") as the beneficiary, for the purpose of providing post-closure funding for maintenance and monitoring of the closed 1.09 acre HWMU. As to the Trust and the Fund, U.S. Bank, N.A., as trustee, is now the successor in interest to Scottsbluff National Bank & Trust Co.

WHEREAS, in 1989, Lockwood obtained a RCRA Post Closure Permit from the State of Nebraska Department of Environmental Quality ("NDEQ") and a RCRA Corrective Action Permit from EPA, which regulate the post-closure care of the 1.09 acre HWMU and corrective

action for six solid waste management units (SWMUs), one of which is the 1.09 acre HWMU.

On or about January 2, 1995, NDEQ re-issued Debtor's Post Closure Permit and required an additional ten years of post-closure care at the 1.09 acre HWMU. The 1989 RCRA Corrective Action Permit issued by EPA to Debtor requires clean up of the SWMUs.

WHEREAS, in 1995, Lockwood began illegal storage of 200 drums of hazardous wastes in a galvanizing pit at its facility. During this storage period, certain personal property assets of the Debtor were transferred to Agromac International, Inc., a Nebraska corporation ("Agromac"). On or about December 29, 1995, without approval of the Bankruptcy Court as required by Section 363 of the Bankruptcy Code, the Debtor entered a month to month lease to Agromac of its real property, including the 1.09 acre HWMU, for approximately thirty thousand dollars (\$30,000) per month, which property is herein referred to as the "Lockwood Real Property".

WHEREAS, operations at the galvanizing plant and illegal storage of hazardous wastes at the facility resulted in a release or threat of a release of hazardous substances at the Site. In 1996, Agromac expended approximately \$127,000 cleaning up hazardous wastes at the Site. Such clean up was completed without an approved RCRA Closure Plan from NDEQ and EPA and without public comment as required by the RCRA regulations, 40 C.F.R. Part 264, Subpart G.

WHEREAS, on or about May 26, 1996, Agromac, Agromac Manufacturing, Inc. ("AMI"), Bruce Wood, Joseph Schon and Trustee entered a Post-Petition Settlement Agreement ("Agreement") approved by the Bankruptcy Court on or about October 7, 1996. Bruce Wood, former president of Lockwood, and Joseph Schon were officers and directors of Agromac and AMI. Since January 1998, Mr. Schon has been the sole officer and director of Agromac and AMI. Pursuant to the Agreement, Trustee acknowledged Agromac's leasehold estate and right of

possession of the Lockwood Real Property as of December 29, 1995, and Agromac's purchase by assignment of a certain Note, Deed of Trust, and Assignment of Rents and Profits from First Bank, National Association, successor-in-interest to and formerly known as First Tier Bank, N.A., evidencing and constituting a first lien and/or security interest, encumbering the Lockwood Real Property (excluding the 1.09 acre HWMU). Under the Agreement the Trustee further agreed to deliver to Agromac a quit claim deed conveying Debtor's right and interest, including equity of redemption, to the Lockwood Real Property (excluding the 1.09 acre HWMU). In return, Agromac agreed to provide free storage space for Lockwood records, maintenance and security for the 1.09 acre HWMU, written monthly reports to the Trustee based upon a visual inspection of the HWMU and surrounding fencing, and to release Lockwood from any claims related to the 1996 Agromac clean up of hazardous wastes. The Agreement also provided that the Trustee would continue the semi-annual ground water monitoring and testing for the 1.09 acre HWMU. The Agreement also provided that Agromac would not be deemed to have become an owner or operator of the 1.09 acre HWMU and the Trustee agreed that the Chapter 7 estate would indemnify and hold Agromac and AMI harmless from any and all liability arising upon or as a result of Agromac's or AMI's assumption of maintenance and reporting undertaken on behalf of the Trustee, except for any intentional wrongdoing or negligence committed by Agromac, AMI or their agents, employees or representatives. Finally, the Agreement provided that in the event the Trustee was able to obtain any recovery for the estate of any monies in the Fund required for post closure care, half of recovered monies net of expenses would be paid to Agromac, without further authorization of the bankruptcy court being required.

WHEREAS, on or about December 4, 1996, by letter EPA transferred the management of the Post Closure Trust Fund to NDEQ.

WHEREAS, the Fund is not an asset of the Chapter 7 Lockwood Estate. The Trustee estimates that total funds of about \$120,000 are available in the Fund. The Trustee indicates the Estate has incurred more than \$52,000 in post closure care expenditures some of which have been incurred in negotiating this Settlement Agreement and has agreed that \$52,000 is acceptable reimbursement for his expenses.

WHEREAS, in 2000, EPA determined that the owners and operators of the Lockwood Real Property were having financial difficulty and were not completing corrective actions in accordance with the RCRA Corrective Action Permit. Thus, the EPA Superfund Program began investigations based on the owners' and operators' potential insolvency and abandonment of the facility. The Lockwood Real Property, including the facility located at 220759 Highway 92, Gering, Nebraska, was identified as the Agromac-Lockwood Site (the "Site") and has been given the Superfund Site Identification No. A722. See Attachment 1 for the Site Map, which is attached hereto and fully incorporated herein.

WHEREAS, on or about October 2, 2000, the Trustee filed with the Bankruptcy Court his Notice of Trustee's Intent to Abandon the 1.09 acre HWMU, which was timely objected to by Agromac and the United States of America. On December 4, 2000, the Bankruptcy Court continued the hearing on Trustee's Notice of Intent to Abandon and the objections until request for hearing by the parties.

WHEREAS, in 2001, EPA conducted a Superfund Time-Critical Removal Action at the galvanizing pit and other SWMUs at the facility to remove hazardous substances and clean up areas that had been abandoned by the facility operators. EPA determined in the Final Report for Removal Assessment Activities at the Agromac-Lockwood Site, March 2002, that additional

work will need to be conducted to complete the removal action at the Site outside the 1.09 acre HWMU. The Final Report showed no additional action needed at the 1.09 acre HWMU, apart from continued cap maintenance, security and reporting. Based on this information in the Final Report, EPA determined the RCRA Corrective Action Permit can be concluded with completion of Superfund removal activities.

WHEREAS, the EPA On-Scene Coordinator conducted a Removal Site Evaluation in 2001, which included sampling ground water near the 1.09 acre HWMU. EPA has also reviewed monitoring data collected by the Trustee on a semi-annual basis since 1996. Based on this information, EPA believes that the RCRA Post Closure Permit may be modified so that cap maintenance, security, and reporting would be continued, but ground water monitoring and sampling may be eliminated. Such modification would be in accordance with the applicable Nebraska regulations and federal RCRA regulation found at 40 C.F.R. Part 270, and may be requested by the Trustee.

WHEREAS, the EPA has incurred expenses of about \$334,588.64 in past costs as of November 30, 2002, and additional response costs may be incurred to complete the response activities at the Site.

WHEREAS, the parties hereto, without admission of liability by any party, desire to settle, compromise and resolve any claims by Agromac and EPA against the Estate, claims by the Estate against EPA or Agromac, the Trustee's Notice of Intent to Abandon, and the objections thereto;

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration receipt of which is hereby acknowledged;

IT IS HEREBY STIPULATED and agreed to by and between the parties hereto, subject to approval by the Bankruptcy Court, as follows:

1. The parties to this Settlement Agreement are the Trustee, Agromac, and the United States.
2. Within ten (10) days after the effective date of this Settlement Agreement, the Trustee shall submit to NDEQ a request for modification of the Post Closure Permit to reduce the time period during which it is required to perform ground water monitoring and sampling and a request to terminate the Post Closure Trust Fund consistent with the RCRA regulations found at 40 C.F.R. Section 270.40 and Nebraska's Title 128, Chapter 15, 011. This Settlement Agreement does not change the standards to be applied in determining whether such a modification should be granted in whole or in part.
3. Within ten (10) days after the NDEQ's approval of the Trustee's request for modification of the RCRA Post Closure Permit and release from the Financial Assurance requirements, the Trustee shall transfer and convey to Agromac by Quit Claim Deed all of the Chapter 7 estate's right, title and interest in the 1.09 acre HWMU and the Lockwood Real Property. Agromac agrees that it shall accept delivery of the Quit Claim Deed from the Trustee. In accordance with the provisions of Paragraph 5 below, Trustee will also transfer Fund monies to the Agromac Escrow Account established by Agromac with the Platte Valley National Bank in Scottsbluff, Nebraska. Said Escrow Account shall receive the deposit, or deposits, of all funds remaining upon termination of the Post Closure Trust Fund after Trustee has been reimbursed for past costs incurred by the Chapter 7 estate in connection with the management (including attorneys fees) of the 1.09 acre HWMU. It is estimated that such costs in connection with the management of the HWMU (including attorneys fees and negotiations) are more than \$52,000.00 and in compensation for which \$52,000.00 shall be billed to the Post Closure Trust Fund by the

Trustee prior to the transfer. The Trustee shall not be reimbursed for transaction fees for transfer of the Fund, nor shall the Trustee shall be reimbursed for costs and expense incurred for efforts in obtaining approval of this Settlement Agreement, consummation of Trustee's obligations arising under this Settlement Agreement, transfer of title to Agromac or efforts to amend the Post Closure Permit. The parties have been provided an accounting and itemization of Trustee's past costs.

4. Within 10 days after the effective date of this Settlement and at least ninety (90) days prior to the transfer of ownership to Agromac of the 1.09 acre HWMU in accordance with applicable State and federal RCRA regulations, Agromac shall submit a revised permit application to NDEQ to identify it as the new permittee and incorporate such other requirements as may be necessary. A copy of this Settlement Agreement and the Bankruptcy Court Order approving this Settlement Agreement shall be submitted to NDEQ with the revised permit application. The revised permit application may take the form of a letter to NDEQ requesting transfer of the permit to Agromac. The transfer request may be conditioned such that Agromac will take title to said permit after the NDEQ approves the Post Closure Permit modification requested by the Trustee in accordance with Paragraph 2 herein.

5. Upon deposit from the Trustee to the Agromac Escrow Account, Agromac agrees to use the Escrow Account for the benefit of the EPA Superfund clean up activities at the Site in accordance with the terms and conditions of a separate companion Administrative Order on Consent (AOC) agreement between the EPA and Agromac. The AOC resolves Agromac's alleged Superfund liability pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. Section 9607, in exchange for work to be preformed and payment of past costs to EPA. Agromac agrees to expend all monies and interest in the Escrow Account in accordance with the

terms of its companion AOC with EPA.

6. In consideration of the payments, distributions and property transfers that will be made by the Trustee under the terms of this Settlement Agreement, and except as provided in this Paragraph and Paragraph 7, the United States of America covenants not to bring a civil action or take administrative action against the Trustee of the Chapter 7 estate of the Debtor pursuant to Sections 106 and 107 of CERCLA and Section 7003 of RCRA, relating to the Agromac-Lockwood Site or to file any claim or request for payment of administrative expenses in the captioned Chapter 7 case relating to the Agromac-Lockwood Site. This covenant not to sue is conditioned upon the complete and satisfactory performance by the Trustee of its obligations under this Settlement Agreement. This covenant not to sue extends only to the Trustee of the Chapter 7 estate of the Debtor and does not extend to any other person.

7. The covenant not to sue set forth in the previous paragraph does not pertain to any matters other than those expressly specified in the previous paragraph. The United States of America reserves, and this Settlement Agreement is without prejudice to, all rights against the Trustee with respect to all other matters, and specifically with respect to: liability for damages for injury to, destruction of, or loss of natural resources; liability for response costs that have been or may be incurred by federal and state agencies which are trustees for natural resources; claims based on a failure by the Trustee to meet a requirement of this Settlement Agreement; and claims for any site other than the Agromac-Lockwood Site.

8. With regard to claims for contribution against the Trustee for matters addressed in this Settlement Agreement, the Trustee is entitled to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

9. The Trustee and Agromac acknowledge and agree that upon execution of this Settlement Agreement, each shall be deemed to have waived and released any and all claims

against the other, except for such obligations required of them pursuant to this Settlement Agreement. Trustee and Agromac agree that this Settlement Agreement is intended to supercede the Post-Petition Settlement Agreement approved by the Bankruptcy Court on or about October 7, 1996, and should it be determined that there is a conflict or inconsistency between the two agreements, this Settlement Agreement shall be deemed to be the controlling agreement.

10. The Trustee covenants not to sue and agrees not to assert any claims or causes of action against the United States of America with respect to the Agromac-Lockwood Site, including but not limited to: any direct or indirect claim for reimbursement from the Hazardous Substance Superfund, any claims for contribution against the United States of America, its departments, agencies or instrumentalities, and any claims arising out of response activities at the Agromac-Lockwood Site. Nothing in this Settlement Agreement shall be construed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611 or 40 C.F.R. § 300.700(d).

11. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement.

12. No later than five (5) days after execution of the Settlement Agreement by all parties:

(a) the Trustee, pursuant to Bankruptcy Rule 9019 and Local Bankruptcy Rule 9013-1, shall lodge this Settlement Agreement with the Bankruptcy Court and move the Court for approval, and;

(b) the United States of America shall submit this Settlement Agreement (and the companion settlement agreement between the EPA and Agromac) for public comment following notice of this Settlement Agreement (and companion settlement agreement) in the Federal Register. The Federal Register notice shall be for a period of not less than thirty (30) days for public notice and comment in

accordance with Section 122(i)(2) of CERCLA, 42 U.S.C. § 9622(i)(2). The United States reserves the right to withdraw or withhold its consent if the comments regarding this Settlement Agreement disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

13. Agromac consents to the entry of this Consent Order without further notice.

14. The Trustee and the United States of America hereby independently reserve the right to withdraw or withhold their consent to this Settlement Agreement if, after notice and hearing as required under Local Bankruptcy Rule 9013-1, facts or considerations are disclosed which indicate that this Settlement Agreement is inappropriate, improper or inadequate.

15. The United States will provide a responsiveness summary of significant comments or a notice that no significant comments were received during the 30-day public comment period to the Trustee after the close of the public comment period in accordance with Section 122 (i)(3) of CERCLA.

16. Within five (5) days of the Trustee's receipt of the responsiveness summary or said notice, provided there has been no timely resistance to the Trustee's motion seeking approval of this Settlement Agreement; and, provided no significant adverse comments cause the United States to consider withdrawal or withholding consent to this Settlement Agreement, the Trustee, in accordance with Local Bankruptcy Rule 9013-1D, shall submit to the Bankruptcy Court a proposed Order approving entry this Settlement Agreement. The effective date of this Settlement Agreement shall be the date the Order of the Bankruptcy Court approving this Settlement Agreement becomes final.

17. If this Settlement Agreement is not authorized and approved by the Bankruptcy Court, this Settlement Agreement shall be of no force and effect, whereupon nothing herein shall

be deemed an admission of any fact or waiver of any right of any party with respect to the matter contained herein, and, the terms of the agreement may not be used as evidence in any litigation between the Parties.

18. This Settlement Agreement represents the complete agreement of the parties hereto on the matters referred to herein and supersedes all prior agreements, understandings, promises and representations made by the parties hereto concerning the subject matter hereof; except for the companion AOC agreement between EPA and Agromac. This Settlement Agreement may not be amended, modified or supplemented, in whole or in part, without the prior written consent of the parties hereto and the approval of the Bankruptcy Court.

19. This Settlement Agreement may be executed in any number of counterparts, each of which when executed and delivered to EPA shall be deemed an original, but such counterparts shall together constitute one and the same document.

The undersigned parties enter into this Settlement Agreement In Re: Lockwood Corporation, Debtor, BK 93-80133, Chapter 7, relating to the Agromac-Lockwood Superfund Site.

FOR THE TRUSTEE:

Date

JAMES J. STUMPF
Chapter 7 Trustee
11623 Arbor Street, #100
Omaha, Nebraska 68144

FOR AGROMAC INTERNATIONAL, INC.:

9-16-03
Date

JOSEPH SCHON
President
Agromac International, Inc.
Post Office Box 100
Scottsbluff, Nebraska 69363-0100

The undersigned parties enter into this Settlement Agreement In Re: Lockwood Corporation, Debtor, BK 93-80133, Chapter 7, relating to the Agromac-Lockwood Superfund Site.

FOR THE UNITED STATES OF AMERICA:

5/1/04
Date

CATHERINE McCABE
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

4/19/04
Date

NEIL M. COWIE
Trial Attorney
Environmental Enforcement Section
U.S. Department of Justice

**FOR THE U.S. ENVIRONMENTAL PROTECTION
AGENCY:**

12/22/03
Date

JAMES B. GULLIFORD
Regional Administrator
Region VII
U.S. Environmental Protection Agency

10/31/03
Date

E. JANE KLOECKNER
Senior Assistant Regional Counsel
Region VII
U.S. Environmental Protection Agency

IN RE: LOCKWOOD CORPORATION
BK 93-80133, CHAPTER 7

ATTACHMENT 1

Site Map

AGROMAC - LOCKWOOD SITE

Figure 1

